

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL CURTIS REYNOLDS,

Plaintiff

v.

LARRY WHITEHEAD, ET AL.,

Defendants

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CIVIL NO. 4:CV-07-297  
(Judge McClure)

**MEMORANDUM**

February 28, 2007

**Background**

Michael Curtis Reynolds (“Plaintiff”), an inmate presently confined in the Lackawanna County Prison, Scranton, Pennsylvania, initiated this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Named as Defendants are Agent Larry Whitehead of the Federal Bureau of Investigation (“FBI”) and Kevin Reardon, who is described as being an FBI informant residing in Binghamton, New York. The complaint is accompanied by a request for leave to proceed *in forma pauperis* and a motion for summary judgment. For the reasons set forth below, Reynolds’ complaint will be dismissed, without prejudice pursuant to the screening provisions of 28 U.S.C. § 1915(g).

The complaint raises claims challenging the legality of Reynolds' ongoing federal criminal prosecution. Specifically, Plaintiff asserts that Agent Whitehead committed perjury, defamation, and fraud by lying in an affidavit which was presented to a federal grand jury. He also contends that the FBI released defamatory stories about him to the press and posted on the internet. The complaint further maintains that Defendant Reardon "lied under oath on an Affidavit" which resulted in his arrest and ongoing detainment. Record document no. 1, ¶ 4. As relief, Plaintiff seeks compensatory and punitive damages as well as injunctive relief, specifically, his acquittal on all charges.

### **Discussion**

Under § 1915(g), a federal civil action by a prisoner proceeding in forma pauperis is barred if he or she:

has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Reynolds, while incarcerated, previously initiated the following civil actions which were dismissed by this Court under 28 U.S.C. § 1915(e)(2)(B) as being frivolous: Reynolds v. Lackawanna County Prison, Civil No. 4:06-CV-1190 (M.D. Pa. July 7, 2006)(complaint *sua sponte* dismissed as frivolous); Reynolds v. Gurganus, et al., Civil No. 4:06-CV-1753 (M.D. Pa. Sept. 11, 2006)(*sua sponte* dismissal on

grounds that complaint is frivolous); Reynolds v. Kosik, et al., Civil No. 4:06-CV-2466 (M.D. Pa. Jan.18 , 2007)(complaint *sua sponte* dismissed as frivolous).

Moreover, this Court recently dismissed a similar complaint by Reynolds under § 1915(g). See Reynolds v. Judge Kosik, et al., Civil No. 4:07-CV-161 (M.D. Pa. Jan. 31, 2007).

The gist of Plaintiff's present complaint, which is dated February 10, 2007, is once again his disagreement with actions occurring during his ongoing federal criminal prosecution.<sup>1</sup> The alleged unconstitutional conduct does not place this inmate in danger of imminent "serious physical injury" at the time his complaint was filed on January 29, 2007. See Abdul-Akbar v. McKelvie, 239 F.3d 307, 312 (3d Cir. 2001), cert. denied, 533 U.S. 953 (2001). Pursuant to the standards announced in §1915(g), Reynolds' present civil rights action is barred. An appropriate Order will enter.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge

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1. Plaintiff is presently the subject of an ongoing federal criminal prosecution in this district. See United States v. Reynolds, Case No. 3:05-CR-493. Jury selection and trial are presently scheduled for March, 2007.

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CIVIL NO. 4:CV-07-297

(Judge McClure)

**ORDER**

February 28, 2007

In accordance with the accompanying Memorandum,

**IT IS HEREBY ORDERED THAT:**

1. The Plaintiff's complaint is dismissed without prejudice as frivolous pursuant to 28 U.S.C. § 1915(g).
2. The Clerk of Court is directed to close the case.
3. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.
4. Plaintiff's accompanying motion for summary judgment (Record document no. 4) is DENIED as moot.

s/ James F. McClure, Jr.  
JAMES F. McCLURE, JR.  
United States District Judge